

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PATRICIA MCGRAW,

Appellant,

v.

DEPARTMENT OF LICENSING,

Respondent.

) Case No. DISM-01-0084

)

) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

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I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and RENÉ EWING, Member. The hearing was held at the Department of Social and Health Services, Division of Child Support Office, in Vancouver, Washington, on October 15 and 16, 2002, and at the Vancouver Licensing Services Office on October 17, 2002.

1.2 **Appearances.** Appellant Patricia McGraw was present and was represented by Emily Sheldrick, Attorney at Law. Mark Anderson, Assistant Attorney General, represented Respondent Department of Licensing.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct and willful violation of agency policy. Respondent alleges that Appellant exhibited rude and unprofessional behavior with customers when she refused to return original documents to them immediately upon their request; when she physically assaulted a customer; and

1 when she physically grabbed the customer to escort him out the door and left the safety of her
2 counter and her cash drawer unattended.

3
4 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084
5 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v.
6 School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services,
7 PAB No. D93-053 (1994).

8 9 **II. FINDINGS OF FACT**

10 2.1 Appellant Patricia McGraw was a Licensing Services Representative 2 and permanent
11 employee for Respondent Department of Licensing. Appellant and Respondent are subject to
12 Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.
13 Appellant filed a timely appeal with the Personnel Appeals Board on October 9, 2001.

14
15 2.2 By letter dated September 14, 2001, Denise Movius, Assistant Director for the Department
16 of Licensing, informed Appellant of her dismissal effective at the close of business on September
17 29, 2001. Ms. Movius charged Appellant with neglect of duty, gross misconduct and willful
18 violation of agency rules and regulations. Ms. Movius specifically alleged that Appellant exhibited
19 rude and unprofessional behavior with customers Jennie Snowden and Josh Scholz when she
20 refused to return original documents to them immediately upon their request; when she physically
21 assaulted Mr. Scholz; and when she left her counter and physically grabbed Mr. Scholz to escort
22 him out the door.

23
24 2.3 Appellant began her employment with the Department of Licensing in February 1983.
25 Appellant's overall work performance was positive and she was considered an experienced and
26 knowledgeable Licensing Services Representative. Appellant has no history of prior formal

1 disciplinary action and she received several letters of commendation for providing good customer
2 service.

3
4 2.4 In 1995, Appellant was promoted to a Licensing Services Representative (LSR) 3 position
5 (Office Supervisor) at the Goldendale Licensing Services Office (LSO). Appellant worked as the
6 sole employee in the Goldendale LSO. Appellant was also responsible for assisting at the White
7 Salmon LSO when the licensing services representative there was on leave. The responsibility of
8 covering two offices began to take an emotional toll on Appellant. Appellant's performance
9 evaluation for the period of February 1999 to May 2000, noted that Appellant appeared stressed and
10 made "short replies to customer comments" when the office was busy.

11
12 2.5 On March 29, 2001, Appellant received a memo from her supervisor, Joe Omlor, which
13 addressed her workplace frustration due to her high workload. The memo addressed an incident
14 that occurred on March 23, 2001, when Appellant contacted Mr. Omlor to tell him she was closing
15 the office early because she could not continue to work that day due to her emotional state.

16
17 2.6 Appellant was feeling the impact of her stress at work and she was concerned that she could
18 no longer run a Licensing Services Office on her own. Therefore, Appellant explored other
19 positions and she subsequently demoted to a Licensing Service Representative 2 at the Vancouver
20 LSO where she could work with and rely on other staff for support.

21
22 2.7 Appellant began working at the Vancouver Licensing Services Office in May 2001.

23
24 2.8 On June 15, 2001, Jennie Snowden and Josh Scholz arrived at the Vancouver LSO, where
25 they were assisted by Appellant at the customer service counter. Ms. Snowden wanted to obtain a
26 Washington State identification card. Appellant reviewed the documents Ms. Snowden presented.

1 Appellant informed Ms. Snowden, however, that the documents were insufficient and inadequate to
2 issue an identification card to Ms. Snowden. Both Ms. Snowden and Mr. Scholz were frustrated
3 and angry because they believed the documentation was adequate based on information they
4 received the previous day by another DOL staff member. Both Ms. Snowden and Mr. Scholz
5 became argumentative with Appellant. The subsequent events are in dispute, however, after
6 reviewing the testimony of Appellant, Ms. Snowden, Mr. Scholz, independent witness Kathy Gill,
7 and other staff of the DOL, we find that, more likely than not, the following events occurred.

8
9 2.9 Ms. Snowden and Mr. Scholz demanded to speak to Appellant's supervisor.
10 Appellant asked them to take a seat while she went to locate her supervisor, however, Ms. Snowden
11 and Mr. Scholz refused to sit down. Appellant was holding Ms. Snowden's documents and Ms.
12 Snowden demanded that Appellant return her documents. Appellant hesitated returning the
13 documents to Ms. Snowden, stating, "No, I need to show them to my supervisor." However, after a
14 brief hesitation, Appellant returned the documents to Ms. Snowden and she turned to locate her
15 supervisor.

16
17 2.10 Appellant's supervisor was not in the office and she returned to the counter where Ms.
18 Snowden and Mr. Scholz were still waiting. Ms. Snowden and Mr. Scholz continued to be angry
19 and hostile. Appellant informed them that her supervisor had stepped out of the office and she
20 asked them to have a seat. Mr. Scholz stated to Appellant "you don't have to be such a bitch."
21 LSR Russell Johnson was working at the adjacent station when he overheard Mr. Scholz call
22 Appellant a bitch. Mr. Johnson looked at Mr. Scholz and told Mr. Scholz to "knock if off," and
23 directed Mr. Scholz to leave the building. Ms. Snowden, who was also acting in a confrontational
24 manner, replied that they were not going anywhere. Mr. Johnson stated that if they did not leave,
25 he would call the police, to which Ms. Snowden replied, "go ahead."

1 2.11 Mr. Johnson observed that Mr. Scholz was argumentative and hostile. Mr. Johnson dialed
2 the police to report the incident. While Mr. Johnson was on the phone with the police, Appellant
3 told Ms. Snowden and Mr. Scholz that they should leave. Mr. Scholz, who was leaning over the
4 service counter, again called Appellant a bitch. Appellant, who was upset and frustrated, reached
5 across the counter and her hand made contact with Mr. Scholz' forearm. Licensing customer Kathy
6 Gill was sitting in the waiting area and viewed the interaction between Appellant, Ms. Snowden and
7 Mr. Scholz. Ms. Gill observed Appellant "slap" Mr. Scholz' arm. Ms. Gill also credibly testified
8 that the contact of Appellant's hand on Mr. Scholz' arm made a "loud slapping noise." Mr. Scholz
9 yelled, "Ouch. You slapped me!" and Ms. Snowden yelled, "You assaulted my husband!" Mr.
10 Scholz testified that Appellant "assaulted" him and that the assault caused him pain and left a red
11 mark on his arm.

12
13 2.12 Based on the distance between Appellant and Mr. Scholz, who were separated by a desk and
14 a counter, we do not find that Appellant's contact had enough impact or force to cause injury to Mr.
15 Scholz. Furthermore, we find that both Mr. Scholz and Ms. Snowden lacked credibility, their
16 testimony was inconsistent, and that Mr. Scholz had motive to exaggerate not only his reaction at
17 the time of the events, but to allege that Appellant caused him pain and fear that she might "assault"
18 him again.

19
20 2.13 Appellant again asked them to leave and they refused. Appellant then went around her
21 counter, placed her fingertips on Mr. Scholz' elbow and took a few steps to direct him toward the
22 exit. Mr. Scholz and Ms. Snowden willingly exited the office and Appellant returned to her
23 counter. Mr. Johnson overheard Mr. Scholz call Appellant a bitch a total of three times during the
24 interaction.

1 2.14 Vancouver Police Officer Eric Jennings responded to the Department's call to 911 for
2 assistance in having an unwanted individual removed from the office. When Officer Jennings
3 arrived, Ms. Snowden and Mr. Scholz were in the parking lot. They reported to Officer Jennings
4 that Appellant had assaulted Mr. Scholz by slapping him on the arm. Officer Jennings viewed Mr.
5 Scholz arm but did not observe any marks, redness or injury.

6
7 2.15 Officer Jennings also spoke to Appellant and reviewed written statements made by other
8 staff at the LSO. Officer Jennings concluded that no assault had occurred and he informed Mr.
9 Scholz and Ms. Snowden that he would not file an assault report.

10
11 2.16 During her case in chief, Appellant presented testimony of an unrelated incident which
12 occurred sometime in 1997 or 1998 at the Auburn LSO where a Licensing Services Representative
13 slapped the hand of a customer. In that case, Steven Sorini, currently a Field Assistant
14 Administrator, was the District Manger for the Auburn office, and he handled the incident. After
15 speaking to the employee and the customer involved in the Auburn incident, Mr. Sorini was
16 satisfied that the matter was resolved and he did not ask for an investigation or recommend any
17 formal disciplinary action against the employee. The incident was never reported to any higher-
18 level authority in management at that time.

19
20 2.17 Denise Movius, Assistant Director of Driver Services, was Appellant's appointing authority
21 when the discipline was imposed. In determining whether misconduct occurred, Ms. Movius
22 reviewed the results of an investigation, which she felt indicated that serious misconduct had
23 occurred. Ms. Movius also met with Appellant on August 10, 2001 to discuss the allegations that
24 Appellant engaged in an inappropriate display of authority; momentarily refused to return
25 documents to Ms. Snowden and Mr. Scholz; slapped Mr. Scholz, and left the protection of her
26 counter to escort Mr. Scholz out of the building. After considering Appellant's response to the

1 charges, Ms. Movius was not convinced that Appellant's actions were mitigated by the
2 circumstances. Ms. Movius concluded that Appellant neglected her duty and disregarded agency
3 policy that required her to treat customers with respect and courtesy. She further concluded that
4 Appellant engaged in an inappropriate display of authority and disrespect toward Mr. Scholz and
5 that her action in slapping him was unwarranted.

6
7 2.18 Ms. Movius also determined that Appellant violated established procedure by coming out
8 from behind the counter, created a potential for escalating the situation further and placed herself at
9 risk of being assaulted by an angry customer. Movius felt that Appellant's behavior set a poor
10 example for other licensing examiners, and she feared that if the agency did not take strong action
11 against Appellant, it would encourage others to treat customers in a similar manner. Ms. Movius
12 believed that Appellant engaged in extremely inappropriate behavior, created significant liability
13 for the agency, and she felt it was the department's responsibility to ensure that such an incident
14 never occurred again.

15
16 2.19 Ms. Movius felt that the incident which occurred in Auburn, though unknown to her until
17 two weeks prior to the hearing in this matter, would not have made a difference in her decision to
18 terminate Appellant because she was 1) unaware of the incident and how it was handled by the
19 manager in that case, and 2) was not the appointing authority at the time.

20
21 2.20 After reviewing Appellant's employment record, including Appellant's most recent
22 performance evaluations and the March 29, 2001 memo from Mr. Omlor, Ms. Movius concluded
23 that termination was appropriate based on Appellant's pattern of escalating frustration in the
24 workplace and her failure to appropriately manage stressful work situations.

2.21 Respondent has adopted policies and regulations that require employees to treat all customers and members of the public with respect and courtesy and to “refrain from any conduct unbecoming a member of the department.” The policy further states that “Licensing Services Representatives will be expected to control their temper when dealing with the public ...” Appellant acknowledges that she was aware of and had received training regarding these policies.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant engaged in misconduct, which warrants termination. Respondent argues that Appellant had a duty to immediately return the documents to Ms. Snowden and Mr. Scholz upon their request. Respondent asserts that Appellant engaged in misconduct when she momentarily retained the documents. Respondent argues that Appellant slapped Mr. Scholz on the arm in frustration, an action that is never appropriate even with a confrontational or angry customer. Respondent contends that despite being involved in an escalating situation with an angry and hostile customer, Appellant left the safety and protection of her counter to physically grab and escort him out of the building. Respondent asserts that dismissal is the appropriate level of discipline despite Appellant’s 18-year history with the department based on Appellant’s inexcusable action of slapping a customer. Respondent argues that the incident at the Auburn LSO was unknown to the appointing authority when the discipline here was imposed and that the manager handling that incident resolved the matter at a lower level and therefore, should not be used to mitigate Appellant’s actions. Respondent argues that the decision to terminate Appellant should be upheld.

3.2 Appellant asserts that the testimony of Mr. Scholz is not credible and that the testimony of Ms. Snowden was inconsistent. Appellant argues that she reached across the counter and “tapped” Mr. Scholz after he called her a “bitch” several times. Appellant admits that she momentarily hesitated to return the documents to Ms. Snowden and Mr. Scholz, but asserts that she was

1 attempting to show them to her supervisor. Appellant argues, however, that she returned the
2 documents after her initial hesitation. Appellant denies that she grabbed Mr. Scholz and asserts that
3 she gently “cupped” him at the elbow to direct him out of the building. Appellant asserts that the
4 incident was isolated and unique, that she was an 18-year employee with a good work history and
5 that dismissal was too severe. Appellant argues that the appointing authority failed to gather all the
6 facts, failed to consider how the Auburn incident, which did not result in termination, was resolved,
7 and failed to consider her history of positive performance. Appellant asserts that termination is too
8 severe under the facts and circumstances.

10 IV. CONCLUSIONS OF LAW

11 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
12 herein.

13
14 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
15 the charges upon which the action was initiated by proving by a preponderance of the credible
16 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
17 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep’t of
18 Corrections, PAB No. D82-084 (1983).

19
20 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
21 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep’t
22 of Social & Health Services, PAB No. D86-119 (1987).

23
24 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency’s ability to
25 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

1 4.5 Willful violation of published employing agency or institution or Personnel Resources
2 Board rules or regulations is established by facts showing the existence and publication of the rules
3 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
4 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

5
6 4.6 We conclude that Respondent has proven by a preponderance of the credible evidence that
7 Appellant's behavior toward Mr. Scholz was inappropriate, unprofessional and unacceptable.
8 Regardless of Mr. Scholz' behavior and language during their interaction on June 15, 2001,
9 Appellant did not have permission to "slap" Mr. Scholz arm and invade his personal space.
10 Although we do not conclude that the credible evidence supports that Appellant's "slap" was hard
11 enough to cause injury or redness to Mr. Scholz' arm, nonetheless, we cannot condone such
12 behavior by a state employee toward an agency customer. Appellant's actions crossed the
13 boundaries of professional behavior in the workplace and undermined the agency's reputation with
14 the public. Appellant's conduct was unprofessional, she failed to use good judgment and she
15 neglected her duty to represent the Department of Licensing in a positive manner. Respondent
16 provided sufficient evidence that Appellant's actions were a neglect of her duty, willful violation of
17 agency policy and rose to the level of gross misconduct.

18
19 4.7 Respondent has failed to prove by a preponderance of the credible evidence that Appellant
20 engaged in misconduct when she faltered momentarily before returning the documents to Ms.
21 Snowden. Under the circumstances of the situation, Appellant's hesitation was not an inappropriate
22 display of authority or a willful refusal to return the documents to a customer. Respondent has also
23 failed to prove by a preponderance of the credible evidence that Appellant engaged in misconduct
24 or violated agency policy when she briefly walked away from the counter and left her cash drawer
25 unattended to escort Mr. Scholz out of the building. Appellant's poor judgment, however, did
26 compromise her safety and placed her in direct contact with an angry and irate customer.

1
2 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to
3 the facts and circumstances, including the seriousness and circumstances of the offenses. The
4 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to
5 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the
6 program. An action does not necessarily fail if one cause is not sustained unless the entire action
7 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).
8

9 4.9 In assessing the level of discipline here, we feel it is unfortunate that Appellant's extensive
10 experience and work history with the Department of Licensing ended as the result of one isolated
11 incident of misconduct. Although Appellant argues that her intent was not to injure or cause harm
12 to Mr. Scholz, her action was unreasonable and inappropriate. The appointing authority provided
13 persuasive testimony that it is never appropriate for a public servant to touch, in anger or
14 frustration, a member of the public. Furthermore, the Department of Licensing, as a public agency,
15 must ensure that its frontline employees behave in an appropriate and professional manner in order
16 to maintain high standards of customer service to the public.
17

18 4.10 Finally, Appellant contends that the discipline imposed upon her is disparate when
19 compared to the Auburn examiner that struck a customer. However, it has been this Board's
20 practice to review each disciplinary appeal before it based on the facts and merits of that individual
21 case, including the employment history of the employee, the existence of progressive discipline and
22 the seriousness of the misconduct. The review that Appellant asks us to make requires that we
23 examine an unrelated incident of alleged misconduct where we have limited and insufficient
24 information before us to make a finding of misconduct and to then evaluate whether the level of
25 discipline was appropriate on a matter over which we have no jurisdiction.
26

1 4.11 Based on the facts and circumstances of this case, we conclude that termination is sufficient
2 to prevent recurrence, to deter others from similar misconduct and to maintain the integrity of the
3 program. Therefore, the disciplinary sanction of dismissal should be affirmed.
4

5 **V. ORDER**

6 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Patricia McGraw is denied.
7

8 DATED this _____ day of _____, 2002.
9

10 WASHINGTON STATE PERSONNEL APPEALS BOARD
11

12 _____
13 Walter T. Hubbard, Chair
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15 _____
16 Gerald L. Morgen, Vice Chair
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18 _____
19 René Ewing, Member
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